

UNAPPROVED MINUTES  
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	March 2, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following one item listed on the agenda:

1. **CONFERENCE WITH LABOR NEGOTIATOR**

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Steve Mattas

Unrepresented Employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

Mayor Esteves stated there were no Closed Session announcements at this time; however, there would be a discussion regarding the Closed Session item when item 7 on the agenda was heard.

**PLEDGE**

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

**MINUTES**

MOTION to approve the City Council minutes of February 17, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**SCHEDULE**

Councilmember Polanski reminded everyone that the 50<sup>th</sup> Anniversary Committee would be meeting on Monday, March 29, 2004, at 6:30 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Polanski, Gomez.

Ayes: 5

**PRESENTATIONS**

Mayor Esteves read a Proclamation recognizing the Black History Living Legacy Hall of Fame and this year's inductees Sandra Edwards, Dr. Geraldine Forte, Beverly James, and Jim Johnson. Sandra Edwards expressed appreciation to the Council for taking this opportunity to recognize them and said it was a real pleasure serving this community. Dr. Geraldine Forte thanked the Council commenting that receiving this award was like coming back home as she started her teaching career at Samuel Ayer High School. Beverly James thanked the Council commenting that it was really exciting this particular year because of the 50<sup>th</sup> anniversary of Brown v. Board of Education that outlawed segregation. Jim Johnson thanked the Council for the honor and recognition commenting that he was one of the first residents in Milpitas and the first Black graduate of Ayer High School.

Mayor Esteves announced that he had signed a Proclamation recognizing March 2004 as "Colon Cancer Awareness Month" and it would be mailed to the appropriate persons.

Mayor Esteves read Commendations recognizing the Chinese Club and Vietnamese Club at Milpitas High School for their collaboration in producing the extraordinary program on February 12, 2004, in celebration of Lunar New Year. The Commendations were accepted by Ada Chang, President, and Johnson Eung, Vice President of the Chinese Club, and by Huong Tran, President, and Cecilia Duong, Treasurer of the Vietnamese Club.

Mayor Esteves recognized Brenda Wong, Advisor for the Clubs, who was present in the audience. Ms. Wong passed out bookmarks in honor of the 100<sup>th</sup> birthday of Dr. Seuss.

#### CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Dr. Karl Black, Superintendent, Milpitas Unified School District, thanked Sandra Edwards, Beverly James, and Geraldine Forte for their years of dedication as teachers and thanked and congratulated the members of the Vietnamese and Chinese Clubs present. Dr. Black announced the upcoming Crab Feed and Silent Auction fundraiser sponsored by the District on March 19, 6:00 p.m. at Napredak Hall and encouraged everyone to buy tickets available through any School District Office, at Sushi Lovers Restaurant, or the Milpitas Post. Dr. Black noted the tickets were \$35 with the proceeds going directly into the classrooms, and the event was also sponsored by the Milpitas Foundation for Education.

Mr. Swanson said it was very thrilling to be associated with the visitors from China and those who live here, and he hoped someday to go to China to explain the idea of how we can teach young people in the 3<sup>rd</sup> grade the beginnings of algebra to understand numbers and to perform at that young age. Mr. Swanson said this number system was a universal language and the sooner we bring it down to our custom and culture at an early age, the better for everyone.

#### ANNOUNCEMENTS

Councilmember Polanski commented on the very impressive and exciting Grand Opening of the Senior Center Annex Modulares on Saturday with over 350 people attending and thanked Mark Rogge and his staff along with the Recreation staff for their work. Councilmember Polanski said she enjoyed the Chamber's Crab Feed and Silent Auction the past Friday night. Councilmember Polanski further stated she, along with the rest of the Council, had received a letter from the Emergency Housing Consortium thanking the City for its leadership role in addressing youth homelessness and read a few comments from the letter. Councilmember Polanski acknowledge City employees Gloria Anaya and Felix Reliford for their efforts on the project and to affordable housing.

Vice Mayor Dixon said she also attended the Interim Senior Center Opening, had a lot of fun and was impressed by the number of people attending that day. Vice Mayor Dixon asked that staff report back to the Council regarding an inquiry she had received from Bob Williams, a resident and property owner, concerning a solid frame fence at Park Victoria and Jacklin that was blown down in a storm in October 2000 and why there has been no remedy to the fence.

Vice Mayor Dixon reported on the construction activity surrounding the Tasman East/Capitol light rail that was tentatively scheduled to open July 1<sup>st</sup>; and on the VTA Finance Administration meeting a week ago where the Committee recommended to the VTA Board that the agreement for the 237 interchange landscaping with Caltrans be amended to shift the final landscaping design responsibility back to the VTA. Vice Mayor Dixon further reported Milpitas hosted the monthly BART to San Jose meeting where the 15 BART stations were reviewed; the VTA was looking at an aerial crossing at Dixon Road rather than at grade, which Milpitas opposed because of concern for the visual impact and potential vibration. Vice Mayor Dixon also reported that Friday she attended a VTA Board workshop and expressed concern that the Board was still putting off the request to look at restructuring the Board; some new members on the Board were starting to group together with Palo Alto and

looking at electrification of CalTrain as a priority that conflicted with BART, so there might be an internal struggle.

Councilmember Livengood reminded everybody that today was Election Day, the polls were open until 8:00 p.m., and encouraged everyone to do their civic duty and vote.

Mayor Esteves congratulated and thanked artist Marianne Calabrese for her 9/11 theme display at the Phantom Art Gallery at the Community Center and congratulated all the newly installed officers of the Milpitas Historical Society.

## **AGENDA**

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

## **CONSENT CALENDAR**

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were none.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

### **\*4. Ordinance No. 261 Public Facilities Use Rules**

Waived full reading of the ordinance. Adopted Ordinance No. 261 adding Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use rules and regulations at designated public sites and facilities.

### **\*5. Comcast Noncompliance**

Adopted a resolution finding Comcast of California in franchise noncompliance for failure to install an Institutional Network, for failure to provide a studio for residents to produce PEG Programming, for failure to correct grounding issues, and for failure to properly remit franchise fees.

### **\*6. Coyote Creek Trail (Project No. 4206)**

Adopted resolution demonstrating acceptance of the grant award from the Santa Clara Valley Water District. Approved a budget appropriation of \$89,400 of the Santa Clara Valley Water District grant.

### **\*8. SBC Agreement**

Authorized the City Manager to approve a Conduit License Agreement between the City of Milpitas and SBC California for the exchange of City owned conduit and SBC owned conduit subject to approval as to form by the City Attorney.

### **\*9. Professional Convergence Solutions**

Authorized the City Manager to approve an Agreement between the City of Milpitas and Professional Convergence Solutions for annual hardware, software and support services through February 28, 2007, in an amount not to exceed \$54,432 subject to approval as to form by the City Attorney.

### **\*10. Milpitas Library Project (Project No. 8153)**

Authorized the City Manager to execute the agreement amendment with Harris and Associates in the amount not to exceed \$29,915.00, subject to approval as to form by the City Attorney.

### **\*11. Harris & Associates Agreement Various Land Development Projects**

Approved agreement and authorized City Manager to execute the agreement for engineering services, subject to approval as to form by the City Attorney.

### **\*12. Luhdorff & Scalmanini Agreement**

Authorized the City Manager to entered into the agreement amendment with Luhdorff & Scalmanini subject in the amount not to exceed \$10,000 subject to approval as to form by the City Attorney.

**Well Upgrade Program  
(Project No. 7076)**

**\*13.  
O'Brien Kreitzberg  
Project Mgmt Services  
Various CIPs**

Authorized the City Manager to execute the agreement amendment with O'Brien Kreitzberg for project management services for fees not to exceed \$329,650, subject to approval as to form by the City Attorney.

**\*14.  
Great Mall Pkwy  
Street Trees and Mulch  
(Project No. 4133)**

Approved plans and specifications. Authorized advertising for bid proposals for construction.

**\*15.  
2 File Servers  
(Project No. 8107)**

Awarded the bid for the file server to Surah, Inc. as the lowest bidder in the amount of \$15,211.29 and authorize the purchase.

**\*16.  
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$6,906.74 to Tractor Equipment Co for low-pressure pump and holding tank hydraulic cylinder repairs and replacement of boom controls on the sewer hydro truck for the Fleet Maintenance Function. (Funds are available from the Public Works Department operating budget for this repair.)
2. \$9,255.38 to TBL Packaging & Distribution for the purchase of 15,000 desk side recycling containers for the Commercial Recycling Program for the Utility Engineering Function. The cost includes the cardboard containers, printing on four sides, die cuts, setup charges and delivery charges. (Funds are available from the Engineering Division operating budget for this purchase.)
3. \$7,794.00 to All American Rentals for the purchase of a replacement aerial work platform to be used by staff for providing access to the interior high reach areas of all city facilities for routine maintenance operations for the Facilities Maintenance Function. All American Rentals submitted the lowest bid. (Funds are available from the Equipment Replacement Fund for this purchase.)

**PUBLIC HEARINGS (NONE)**

**JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1.  
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:30 p.m.

**RA2.  
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.  
MINUTES**

MOTION to approve the Redevelopment Agency minutes of February 17, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**RA4.  
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**\*RA5.  
AUDIT SERVICES  
MAZE & ASSOCIATES**

Authorized the extension of the contract for audit services with Maze and Associates Accountancy Corporation for fiscal year 2003/2004.

**\*RA6.  
PARCEL APPRAISALS  
NOLTE & ASSOCIATES**

1. Authorized the City Manager to execute the agreement amendment with Nolte & Associates in the amount of \$71,000, subject to approval as to form by the City Attorney;
2. Approved the budget appropriation of \$80,000 for Project No. 8154 for the additional services plus staff time.

**RA7.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:31 p.m.

*The City Council meeting continued.*

**REPORTS OF OFFICERS & BOARDS**

**1.  
Agenda Publication**

Councilmember Gomez placed this item on the agenda and reported that he recently attended a United Neighborhoods Conference of Santa Clara County and one of the more common complaints from neighborhood associations throughout Santa Clara County was problems in obtaining staff reports and information from staff since most cities release their agenda information on Thursdays like Milpitas does; in response, some cities have moved their release date up as much as 10 days like San Jose. Councilmember Gomez said by releasing the agenda on Thursday, as Milpitas does, it only allows up to two business days for community members and organizations to talk to staff, educate themselves on an item or take a position, and in some cases organize their neighbors; if the staff reports were published on Tuesday, like he was proposing, the earlier date would allow residents two more days to review the information, talk to staff, organize their neighbors, and also serve our weekly publications allowing them to report on items before they are considered. Councilmember Gomez said he realized there could be some problems with items before other commissions (i.e., Planning Commission) that meet on Wednesday; however, he thought those items could be handled through amended agendas.

Councilmember Livengood asked for clarification that the issue was the agenda getting out to community groups. Councilmember Gomez responded the agenda and staff reports being made available at an earlier date.

Councilmember Livengood inquired when the agenda was mailed. City Clerk Gail Blalock responded that the agenda was no longer mailed since it was available online and the staff reports were also available online; the agenda and staff reports were ready at the end of the day on Thursday and were made available online by Friday afternoon. Councilmember Livengood asked what was the impact of moving the schedule up two days. City Manager Wilson said staff could handle any date the Council proposes but when, as Councilmember Gomez addressed, some action was needed following a Planning Commission meeting, to update the staff report or amend the agenda would take some work; the posting to the web site could occur on Thursday if the completion date was pushed to Wednesday afternoon and policy direction in the past was that none of that happens until the material was fully ready for the Council. Councilmember Livengood said he thought that was a good policy and didn't have a problem moving up the process a couple of days, from Thursday to Tuesday, but expressed concern that any earlier could run into serious issues and he wanted to stay away from amended agendas.

Councilmember Polanski said she really didn't like amended agendas or something coming to her at a meeting and expressed concern about moving the date back; with the web access, she frequently receives calls prior to her reading the agenda; she had not been approached or heard any concerns about the timing of the staff reports and was curious what groups were coming forward with concerns because she hadn't received any.

Vice Mayor Dixon said she hadn't received any comments from community members, commented that normally with a big project, interested people are notified through a different process, and her concern, having dealt with the VTA's amended agendas, was that amended agendas can be confusing. Vice Mayor Dixon also expressed concern for the extra workload it would put on staff and the potential that something that really needs to be on the agenda could be pushed out an additional two weeks because of the earlier deadline. Vice Mayor Dixon suggested pushing it back one day to see how it works but was hesitant to push it back two days.

Mayor Esteves expressed concern that it might penalize a project and pointed out that the current schedule really allows five days (Friday through Tuesday). Mayor Esteves said he hadn't received any complaints or heard any concerns.

Councilmember Livengood said he had received complaints but that was before the agenda was available on the Internet; since people are depending more and more on the Internet, maybe one day earlier (24 hours) could be tried to see what happens, to see if staff could do it without any problem, and if it doesn't work, it could always be changed back.

City Manager Wilson said staff could probably accommodate one day without a problem but shifting it two days would be a little difficult because of the way the days fall, staff hadn't received any complaints, and if the Council would like to try it for a period, staff would need a little time to ramp up and suggested a short trial period with a report back to the Council.

Councilmember Gomez said it appeared he wasn't going to get support for moving it up two days and would be happy to settle for one day; his reasons for asking for two days were so that weekly publications could have an opportunity to report on items they might deem important before the meeting and in the interest of making government more open to the public.

Councilmember Polanski said she still was concerned with moving it up one day because of the hiring freeze, all departments were down on staff, and staff was continually being asked to do more with less. Councilmember Polanski suggested waiting until after the budget process when we see where we are with the hiring and the impact on the departments because she was really concerned about impacting staff more than they are now.

Mayor Esteves inquired why the hardcopy comes before the electronic copy. Information Services Director Bill Marion explained that the attachments (the packet information) are received by IS in hardcopy form and need to be converted to electronic format; the agenda document is received electronically.

MOTION to direct staff to release the Council agenda and staff reports on the Wednesday prior to the Tuesday Council meeting on a trial basis for six months, with the start date to be determined by staff.

M/S: Gomez, Livengood.

Councilmember Gomez asked the City Manager how much time would be needed. City Manager Wilson responded about a month, suggesting starting with the first meeting in May.

VOTE ON MOTION: Ayes: 4 Noes: 1 (Polanski)

Councilmember Polanski stated she had no objection to moving the date up for access by the public; however being down on staff, she would have preferred to wait until after the budget cycle into the new year.

**2.  
Sister City Relationship**

Public Information Specialist Leslie Stobbe reported the item before the Council was a request for a Sister City relationship and approval of a Memorandum of Understanding with Huizhou City, China, and introduced Sister Cities Commissioner Dennis Grilli who was the Commission's lead contact person. Mr. Grilli reported last year the Sister Cities Commission

recommended to the Council a sister city relationship with Huizhou, China; Francis Chien of the Huizhou-Milpitas Sister City Committee made an extensive presentation to the Commission and following subsequent discussions, the MOU was defined for the relationship between Milpitas and Huizhou City, the mainstays of the exchange being cultural, educational, and a student exchange to benefit both communities; and the details would be drafted by the Commission and the Committee. Mr. Grilli further reported the Commission expressed concern about the financial relationship and the Huizhou Sister City Committee responded to that concern and is clearly well prepared to support this relationship both financially and with local personal support.

Johnson Shi, Deputy Director, Bureau of Foreign and Overseas Chinese Affairs, Huizhou Municipality, said he was pleased to be present to introduce the Council to his City of Huizhou, and thanked the Milpitas Sister Cities Commission and the Huizhou Sister City Committee for their work and for giving him this chance to make a presentation. Mr. Shi, using a PowerPoint presentation, showed photographs of Huizhou City, a coastal city in southern China, described some of the city's history, environment, and climate, and welcomed everyone to visit Huizhou City.

Mr. Grilli stated that the Sister Cities Commission recommended approval of the relationship as defined in the MOU and introduced Commission Chair Debra Garcia. Chair Garcia announced the Sister City Committee had its officers in place and was now recruiting for members; and the paperwork was being filed through the City Attorney's office.

Mayor Esteves welcomed Mr. Shi to Milpitas and thanked him for taking a great interest in Milpitas. Mayor Esteves commented that Mr. Shi had a very beautiful city and he was sure Milpitas and Huizhou would have a great cultural exchange. Mayor Esteves congratulated the members of the Committee and supporters who were present because they were important in sustaining the relationship. Mayor Esteves also congratulated the Sister Cities Commission for being very active.

MOTION to approve the Sister Cities Commission's recommendation to enter into a two-year sister city relationship with Huizhou City, China, and authorize the Mayor to sign the original MOU at a future Council meeting.

M/S: Livengood, Dixon.

Ayes: 5

Mayor Esteves presented a token souvenir from Milpitas' 50<sup>th</sup> Anniversary Celebration to Mr. Shi. Mr. Shi presented the Mayor and Council with a Chinese painting of West Lake in Huizhou City.

Dennis Grilli said he wanted to bring to the Council's attention the help that Leslie Stobbe has been to the Commission in establishing this sister city relationship as well as the sister city relationship with the Philippines.

## **NEW BUSINESS**

### **3. Ethics Survey**

Acting Planning Director Tambri Heyden summarized the ethics project to date reporting that over the past four weeks, Dr. Shanks, the ethics consultant, conducted 25 one-on-one interviews to obtain background and observe the culture of the City, in addition, a group stakeholders interview was conducted at a public meeting held by the Community Advisory Commission on February 18, 2004, and attended by 27 individuals. Ms. Heyden described the citizens survey process defined by the Ethics Steering Committee to distribute a survey to a random sample of Milpitas households (1,184) limiting the survey to two per household; the purpose of the survey was to gather information about citizens' experiences and satisfaction with government and services, attitudes about public trust and confidence, and citizen beliefs about important standards to include in an ethics code necessary to proceed with the ethics code development.

Ms. Heyden said one additional question was proposed by the Ethics Steering Committee to be added to gauge the public's opinion of incorporating an accountability system into the program. Ms. Heyden reviewed the next steps and timeline, reported that a stakeholder report and code preparation plan would be brought forth to the Council on March 16, with June 1 as the target date for Council approval. Ms. Heyden reviewed the recommendation to approve the survey for translation and release and noted Dr. Shanks was present to answer any questions.

Councilmember Gomez commented said he wanted to make sure the whole process was inclusive and when he was asked in his interview who else he would suggest be interviewed, he provided a list of names but didn't see that they were included. Ms. Heyden responded that they could be included. Councilmember Gomez asked if Dr. Shanks had shared the list with her. Ms. Heyden responded no but it wasn't too late for them to be interviewed. Councilmember Gomez said his only concern was that he knew other Councilmembers added names and those people were interviewed. Councilmember Gomez further stated during this whole process, when we start looking at the strengths, weaknesses, and opportunities, he wanted those people to be interviewed and hadn't seen them on the list. Ms. Heyden said they could be included and it wasn't too late. Councilmember Gomez said he thought it was very important that this process be inclusive because he didn't want to set up a process where we guarantee re-election of the incumbent again.

Vice Mayor Dixon said when she had her one-on-one interview, she didn't give any names to Dr. Shanks but did contact staff because the Council wasn't told who was going to be interviewed; that was why the School Board's names were given to staff.

Councilmember Polanski said she also didn't share any names with Dr. Shanks as well; everything was through staff. Councilmember Polanski further stated she appreciated the efforts of the steering committee and was pleased some other members of the public were being added. Councilmember Polanski said she also appreciated the process and the work of the CAC, how everyone was very open at the public meeting, how they shared information, and was pleased with the survey and how the process has been to date.

Councilmember Livengood inquired how the 1,184 households would be selected. Dr. Shanks described how a list of all households would be used and how they would be selected at random to end up with 1,184. Dr. Shanks said the survey should be very reflective of the demographics of Milpitas; if it was found not to be reflective, there were some techniques that could be used to supplement.

Councilmember Livengood commented that the issue of who is going to say something is an ethics violation was an important issue (what he called the "says who" question) because if it is perceived as a political body in any way, then whatever they come up with will be perceived as political and inquired how that would be addressed. Dr. Shanks responded that usually a community figures that out; the code itself would be a set of general statements; the training would involve the Council sitting down and sharing the drafts of what it looks like (what does this look like in your job; what does it look like for the commission, the departments, and City Manager) but really the community will determine what it looks like to be ethical.

Councilmember Livengood said he thought it was a good survey and inquired if people should be asked who they think should be the arbitrator? Dr. Shanks responded the whole question of accountability was something we will have to spend some time talking about; most people who get the survey wouldn't have the background they need to answer the question; it was the City Council that ultimately decides if there is going to be accountability and who decides; so after a lot of input, we will lay before the Council what seems to be everyone's best idea how to do accountability; the answer was complicated and he didn't know if an arbitrator was needed; and he thought a better way to do it was after the election, get everybody back in the room and have a conversation on "what kind of campaign did you run." Councilmember Livengood expressed concern that if you create a code and if somebody who feels they have been wronged looks for relief, the first thing they ask is "where do I go to right this wrong"; if



there is no place to go, you've created an empty vessel, and this was something he thought should be looked at.

Councilmember Livengood called attention to question 14 that dealt with limiting campaign spending and asked if this question meant spending too much money was unethical? Dr. Shanks responded many people are concerned about the rising cost of running campaigns; sometimes it might exclude people who might not run; and some cities have responded to that by putting limits. Councilmember Livengood said generally speaking, this was a good survey and he was looking forward to seeing the results; he asked that when the results are presented that they also include the demographics.

Mayor Esteves said he was very pleased with the project because Milpitas is a very progressive city. Mayor Esteves asked in terms of schedule, was it the plan to have this in place for the November election. Dr. Shanks responded yes, they thought that was manageable. Mayor Esteves commented that the question concerning campaign limits may not be an issue but he was glad it was included because he wanted to hear from the public and he was looking forward to ethical guidelines for everybody.

Dr. Shanks commented that if any of the Council had names of people to be interviewed one-on-one, he would be happy to do that.

Vice Mayor Dixon thanked Dr. Shanks, she personally thought this was long overdue commenting that we just came through one of the nastiest campaigns she had seen in awhile. Vice Mayor Dixon said that speaking for herself, she didn't put that much money into her campaigns, she believed you have to stand on your record and go out and talk to the community; she was particularly concerned about the educational portion and thought the survey was so detailed that there should be good feedback. Vice Mayor Dixon further stated on the issue of having a review board, she was very leery of that because of what happened in the last election; she thought this was very brave coming right after the recent election to go out into the community and expose ourselves to the community but believed it was because we care so much about our community that we open ourselves up to criticism. Dr. Shanks commented that the leadership of a program like this was very important, and he commended the Council and also the staff and people working on this.

MOTION to approve the draft ethics survey with the additional question and random process, including providing information on the demographics with the survey results.

M/S: Polanski, Gomez.

Ayes: 5

## **BIDS & CONTRACTS**

### **7. City Manager Agreement**

City Attorney Steve Mattas reported the item before the Council was consideration of Amendment No. 3 to the employment agreement with the City Manager; the Council was provided with a copy of the staff report and the draft agreement, and advised that he and Councilmember Polanski served as the City's negotiators regarding this issue. Mr. Mattas summarized the contract would be for a two-year term (January 1, 2004, through December 31, 2005); it included a provision for an evaluation in November or December each year and at any other time the Council deems appropriate; provides for an increase in administrative leave from seven days to 14 days per year; provides a 12.8 percent increase in compensation to \$203,353 effective January 1, 2004; and obligates the City Manager to make a minimum employee payment contribution back to the City of five percent of his salary for the two year contract period and if the employee groups contribute a greater percentage, the City Manager would be obligated to match that percentage. Mr. Mattas explained the net effect of the increase was a net increase to \$193,185 per year, a 7.2 percent increase, and annualized after the employee contribution of about 2.05 percent per year since the last increase (before the employee contribution about 3.66 percent per year); and for calendar year 2005, the contract would be modified up to a maximum of \$7,000 if the Police Chief's compensation was

increased. Mr. Mattas said the Council had before them a resolution and Amendment No. 3 for approval.

Councilmember Polanski commented that she was beginning her 21<sup>st</sup> year as an elected official, this has been quite a long process but she wanted to state that the meetings she and the City Attorney had with the City Manager were all very professional, Mr. Wilson is probably the second professional she has worked with at this level, the only other person that came to mind was Dr. Charles Perotti, and not only was Mr. Wilson very professional in the negotiations, but he was also looking out for the best interest of the community and the City and for that she wanted to thank Mr. Wilson. Councilmember Polanski said it's not fun to negotiate but Mr. Wilson was very professional and she appreciated that and was recommending this to the Council. Councilmember Polanski further stated in the last year as she worked with Mr. Wilson and the entire City staff, she was amazed by what we have been able to accomplish; when you look at the quality of life we are still able to maintain for our citizens, everyone should be proud of what we have been able to accomplish; and she wanted to say as one Councilmember, she believed this was fair, equitable compensation for someone whom she believed has been looking out for the City. Councilmember Polanski thanked Mr. Wilson and all the professional staff for their work.

Mayor Esteves said he was pleased with what had been accomplished under Mr. Wilson's leadership and that of the Council and was comfortable with the proposal. Mayor Esteves further stated he wanted to make everyone aware that this was a great gesture of being open-minded in terms of the economic situation we have right now; he was happy with the performance and accomplishments as a City and a major part of that was due to the leadership of Mr. Wilson.

Vice Mayor Dixon commented that this had been a long drawn out process, she had prepared some comments, and asked everyone's indulgence while she read her comments. Vice Mayor Dixon began her comments by stating as second in seniority on this Council and six years on the Planning Commission, she has had a working relationship with four City Managers and two Interim City Managers; one of the Chief Administrator's most important roles was to provide their best professional recommendations and sometimes the recommendations create friction with some elected officials and are interpreted as uncompromising rather than professional responsibility. Vice Mayor Dixon said elected officials should keep in mind that conflict is a normal, healthy part of the public process and can help focus issues and surface additional options; however, encouraging recommendations from the top administrator does not mean that elected officials have to follow them. Vice Mayor Dixon commented on the controversial hiring on a 3 to 2 vote of a City Manager in 1996 that caused the city organization a great deal of pain during the four years leading up to the abrupt termination, which was also costly to the taxpayers. Vice Mayor Dixon said she brought up this past history to illustrate her understanding of what constitutes a good, capable administrator over one that is middle of the road or a poor performer; another issue troubling her was that there is no accepted standard of review used in evaluating the top administrator or the attorney; and she felt this was partly responsible for the current path that began three years ago.

Vice Mayor Dixon pointed out that Mr. Wilson was the only City employee, including this Council, to receive no new compensation in over three years; the compromised reached tonight of 12.8 percent was for a minimum 3 ½ year period (July 2001 through December 2004); annualized, the increase is 3.66 percent per year; with the non-reimbursed five percent employee contribution of \$10,168, it brought the City Manager's net salary increase annualized over the 3 ½ years to a 2.05 percent increase in compensation and placing the City Manager's net annual salary \$1,832 above that of the highest paid employee.

Vice Mayor Dixon said the facts that helped her in assessing the top administrator were his creating and expressing a vision for the organization; his knowledge about key issues important to the Council; his keeping informed about the latest technological, legislative, and political developments affecting the City; his expressed views and perspective to the Council on controversial issues; providing professional staff recommendations on most issues; sticking

to a professional position when warranted despite political pressure; making sure Council policy and direction is implemented after a decision; responding to citizen complaints in a timely manner, even answering his own phone; providing early warning to the Council on future and present financial problems; and development of a management team that, for the most part, is decisive and responsive. Vice Mayor Dixon pointed out that one of the main reasons Mr. Wilson was hired had to do with the number of top management that had left the city in the midst of building City Hall; not only did Mr. Wilson take on this major responsibility, he put together a team to finish this building and that success was continuing with the same team for the library and future renovation of the old library for a senior center.

Vice Mayor Dixon said she felt Mr. Wilson has demonstrated a clear vision on economic development as evidenced by the expansion of the Redevelopment project area; as a result of this added revenue ability, the Council was able to stop the expansion of the Elmwood prison by purchasing the remainder of the land; and all this has put Milpitas in an enviable position economically compared to other cities in the Bay Area. Vice Mayor Dixon further stated that she evaluated Mr. Wilson on his activity and visibility in the community and felt that he has attended more events than some members of the Council. Vice Mayor Dixon apologized for her lengthy statements but commented that it was a reflection of the frustration she had experienced over the past three years; she felt it was critical to provide direct, honest feedback to administrators regarding performance and perceptions and not let grievances fester. Vice Mayor Dixon stated she believed Mr. Wilson has the integrity and knowledge to guide this excellent city organization through what lies ahead for every California city and county.

Councilmember Gomez said he voted against a raise for himself and so was not going to vote for the CEO of our city to get a raise when most CEOs across the country are taking pay cuts; he thought \$180,000 a year plus a housing allowance was enough.

Councilmember Livengood said he didn't think there was any secret about his feelings about Mr. Wilson; when he first got here, Councilmember Livengood supported giving him a 9 percent raise; statements had been made we need to catch up for years when he didn't get a raise, but he didn't get a raise for a reason because there were City Councils elected that decided not to give him a raise. Councilmember Livengood further stated he didn't think it was legitimate to say we're going to give him 12 percent because he didn't get raises back in this or that year; he didn't get raises because there were reasons for it and he couldn't talk about a lot of those reasons because they are personnel related and covered under executive session privilege, so he couldn't talk about them and wouldn't violate that privilege. Councilmember Livengood said he could tell you about the professionalism everybody likes to tout about Mr. Wilson and suggested asking the firefighter who was standing out front of City Hall when it was at the Mall trying to do his job when Mr. Wilson screamed at him with a crowd of about 10 or 20 people around; ask him if he thinks the City Manager is professional. Councilmember Livengood stated he was not voting to give Tom Wilson any more money; there are a lot of problems at City Hall; he wasn't going to cover them up or sweep them under the carpet; he has a good salary and housing allowance he never likes to talk about, so he was voting no.

Mayor Esteves commented that the proposed adjustments were really making the pay fair and equitable with all the other employees; he didn't see any problems inside City Hall; he hadn't seen any morale problems or turnover, which was a big indicator of morale problems. Mayor Esteves said in the previous years, employees received the highest increases and at the same time we have been able to avoid layoffs and protect City services; and we are really an enviable city. Mayor Esteves said he was not here to rock the boat for any political reason, he was here to work, and praised and recognized the work of City employees who are doing their jobs under the leadership of Mr. Wilson. Mayor Esteves further stated he thought this was just a fair adjustment for the big invaluable accomplishments the City was enjoying.

Vice Mayor Dixon said she wanted to correct the record regarding Councilmember Gomez's statement that he didn't vote for a pay increase for himself and read the motion from the March 18, 2003, Council minutes to reduce Councilmembers' and the Mayor's discretionary

budgets to \$1,000 for Councilmembers and \$2,000 for the Mayor and to wait until the employee groups presented their proposals for cutting salaries before making any adjustments to Council salaries, approved on a 5/0 vote.

Councilmember Polanski said she believed it was brought up there was a reason the City Manager hadn't received raises in the last three years because the Council had done that; it was also stated that there was a housing allowance which, she believed, was approved by the City Council as part of the package when the Council hired him in order to bring him here; the housing allowance was something agreed to and should stand; and she didn't think there was an organization she had every been involved with or worked for where there wasn't some discontent or unrest or employee problems no matter what level; if there ever was an organization that was completely void of conflict, they would be making billions of dollars trying to sell it to the rest of us; she didn't look at this as compensating for the years the City Manager did not receive compensation; she believed the Chief Executive Officer should be compensated fairly and that the package that had been negotiated was fair compensation.

MOTION to adopt Resolution No. 7388 approving Amendment No. 3 to the Employment Agreement between the City and Thomas J. Wilson.

M/S: Polanski, Dixon.

Ayes: 3

Noes: 2 (Gomez, Livengood)

#### **ADJOURNMENT**

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:11 p.m.

Gail Blalock, CMC  
City Clerk